

General instructions

Filing requirements

A fiduciary for a resident estate or trust, or a fiduciary for a nonresident estate or trust which derives income from North Dakota sources, must file Form 38 if required to file Federal Form 1041.

Resident estate or trust. A fiduciary for a resident estate or trust is generally subject to the same law provisions which apply to a resident individual. The entire income (loss) of a resident estate or trust must be reported to North Dakota.

Nonresident estate or trust. A fiduciary for a nonresident estate or trust is generally subject to the same law provisions which apply to a nonresident individual. Only the portion of the nonresident estate's or trust's income (loss) derived from North Dakota sources must be reported to North Dakota.

Employer identification number. For North Dakota purposes, use the same employer identification number used on Federal Form 1041.

Signature. The fiduciary or an authorized representative of the fiduciary must sign the return. If a person other than the fiduciary is paid to prepare the return, the paid preparer must also sign the return.

Which schedule to use. Either Schedule 1 (Main Method) or Schedule 2 (Optional Method) may be used to calculate the tax. The two methods will yield different results, so it is recommended that both methods be compared before choosing one. Use the method showing the lowest tax.

When to file and pay

A return for the calendar year 2001 must be filed on or before April 15, 2002. A return filed on a fiscal year basis must be filed on or before the fifteenth day of the fourth month following the end of the fiscal year. If the due date falls on a Saturday, Sunday or legal holiday, the return is due on the next business day. Tax due on the return must be paid in full with the return.

Extension of time to file. If an extension of time to file the federal fiduciary income tax return is obtained, it will be recognized by

North Dakota. Or, if a federal extension isn't needed, a separate North Dakota extension may be applied for using Form 101. The North Dakota extension is not automatic—there must be good cause to request one. Form 101 must be filed on or before the due date of Form 38. At the time Form 38 is filed, check the extension box at the top of Form 38 and attach a copy of the federal extension form or the approved state extension form, whichever applies. If there is tax due on the return, interest is charged at the rate of 12% per year from the original due date of the return to the earlier of the extended due date or the date the tax due is paid.

Where to file and pay

Form 38 must be filed with the Office of State Tax Commissioner, State Capitol, 600 E. Blvd. Ave., Bismarck, North Dakota 58505-0599. Make the check or money order payable to "State Tax Commissioner."

Penalty and interest. By law, penalty and interest must be charged on a late payment of tax. The penalty is 5% of the late payment (with a minimum of \$5.00). In addition, interest on the late payment is charged at the rate of 1% per month or a fraction of a month (except for the month in which the tax was due) until the tax due is paid.

Estimated income tax

A fiduciary may have to pay estimated North Dakota income tax for 2002 if both of the following apply:

1. The fiduciary is required to pay estimated federal income tax for 2002.
2. The fiduciary's net tax liability for 2001, and the estimated balance due (after withholding but before estimated tax is subtracted) for 2002, is \$500 or more. (*If no return is required to be filed for 2001, no estimated tax payments are required for 2002.*)

For more information, obtain North Dakota Form 401-ES.

Beneficiaries

A beneficiary of an estate or trust that is required to file Form 38 may be required to file a North Dakota income tax return to report the income (loss) distributed or distributable to the beneficiary.

Resident individual. A resident individual must report to North Dakota his or her entire share of income (loss) from any estate or trust, as determined for federal income tax purposes.

Nonresident individual. A nonresident individual must report to North Dakota the portion of the income (loss) from an estate or trust that is derived from North Dakota sources. This includes the same kinds of income (losses) that would be reportable to North Dakota had the nonresident individual derived them directly from the North Dakota sources.

Other entities. If a beneficiary is a corporation, partnership, or other type of entity, see the instructions to the applicable North Dakota income tax return for filing and reporting requirements.

Information returns

Every fiduciary having a requirement to file a Federal Form 1099 or a Federal Form W-2 must also file one with North Dakota. For details, obtain the *Income Tax Guideline: Information Returns*.

Amended returns

Check the "Amended return" box at the top of Form 38 if it is being filed to correct a previously filed Form 38. If an amended Federal Form 1041 is filed or the Internal Revenue Service makes changes to Federal Form 1041, an amended Form 38 must be filed within ninety days after filing the amended federal return or within ninety days after the final determination of the IRS changes.

Where to get forms and assistance

For forms or assistance, call toll free (within North Dakota) 800-638-2901. The local number is (701) 328-3450. The speech or hearing impaired may call through Relay North Dakota at 800-366-6888 (*ask for 800-638-2901*). Or write to: Office of State Tax Commissioner, State Capitol, 600 E. Blvd. Ave., Bismarck, ND 58505-0599.

Internet Web site

You may obtain forms and guidelines, submit questions and comments, and find other useful information on our Internet web site. The address is:

www.ndtaxdepartment.com

Federal Privacy Act

In compliance with the Federal Privacy Act of 1974 (Public Law 93-579), the disclosure of a social security number or federal employer identification number on this form is mandatory and is required under subsections 1 and 7 of North Dakota Century Code § 57-38-31. A social security number or federal employer identification number is used as an identification number by the Office of State Tax Commissioner for file control purposes, recordkeeping, and for cross-checking a taxpayer's files with the Internal Revenue Service.

Specific instructions

Steps to completing Form 38

1. Complete the top portion of Form 38 (name, address, FEIN, etc.).
2. Complete either Schedule 1 (Main Method) or Schedule 2 (Optional Method). See "Which schedule to use" under **Filing requirements** on page 1 of these instructions. *Do not complete both schedules on the return filed.*
3. Complete lines 10 through 16 on page 1 of Form 38.
4. If the estate or trust has one or more beneficiaries, complete Schedule 3 on page 2 of Form 38.

Specific line instructions for Schedule 1 (Main Method)

(Page 1, Form 38)

Note: *If an electing small business trust (ESBT), include the separate S corporation items in the amounts entered on lines 1 and 2 of Schedule 1, Form 38.*

Line 3

The following items must be entered on this line to the extent taxable to the fiduciary:

- Taxable portion of a lump-sum distribution reported on Federal Form 4972.

- Amount of loss from a pass-through entity subject to the North Dakota financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From A Pass-Through Entity Subject To N.D.C.C. ch. 57-35.3. Attach a copy of the statement received from the entity.*

Line 5

The following items may be entered on this line, but only to the extent the income is included in the amount on line 2:

- Interest income from U.S. obligations and other securities the interest from which is specifically exempted from state income tax by federal statute. Include the portion of dividend income from a mutual fund that is attributable to interest from similar types of securities. Unless already identified on the federal return, attach a statement specifically identifying the securities. For a mutual fund, identify the fund, qualifying securities held by fund, and percentage of interest income from qualifying securities.
- Thirty percent of a net long-term capital gain. A net long-term equals the excess of a net long-term capital gain over a net short-term capital loss.
- Income earned by a Native American while living and working on the Indian reservation where enrolled.
- Taxable part of payments from the U.S. Railroad Retirement Board. **Attach a copy of Form RRB-1099 or RRB-1099-R, or both.**
- Amount of income from a pass-through entity subject to the North Dakota financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From A Pass-Through Entity Subject To N.D.C.C. ch. 57-35.3. Attach a copy of the statement received from the entity.*
- Income exempted under N.D.C.C. ch. 40-63 (Renaissance Zone Act). **Attach Schedule RZ.**

Line 8a

Nonresident estate or trust only

If a nonresident estate or trust, enter the portion of the amount on line 1 that is derived from North Dakota sources. Income from North Dakota sources includes income from tangible property in North Dakota, such as rents, mineral property royalties, and gains from the sale or exchange of the

property, income from a trade or business carried on in North Dakota, and other types of income that are properly sourced in North Dakota. Do not include interest, dividends, or gain from the sale or exchange of intangible property.

Specific line instructions for Schedule 2 (Optional Method)

(Page 2, Form 38)

Note: *If an electing small business trust (ESBT), include the separate S corporation items and the separately computed federal income tax in the amounts entered on lines 1 and 8, respectively, of Schedule 2, Form 38.*

Line 2

Resident estate or trust—A fiduciary for a resident estate or trust must enter the following items on this line if allocated to, or retained by, the fiduciary:

- Except for North Dakota and its political subdivisions, interest from state and local government obligations that is exempt from federal income tax. Include the portion of dividends received from a regulated investment company (mutual fund) that is attributable to the mutual fund's investment in the same kinds of obligations.
- State and local income taxes deducted in determining federal taxable income.
- Lump-sum distribution reported on Federal Form 4972.

All estates and trusts—A fiduciary for a resident or nonresident estate or trust must enter on this line the amount of a loss from a pass-through entity subject to North Dakota's financial institution tax if the loss is allocated to, or retained by, the fiduciary. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From A Pass-Through Entity Subject To N.D.C.C. ch. 57-35.3. Attach a copy of the statement received from the entity.*

Line 4

Resident estate or trust—A fiduciary for a resident estate or trust may deduct the following items if they are allocated to, or retained by, the fiduciary and included on line 1:

- Interest income, up to a maximum of \$300, received from a North Dakota financial institution.

- Interest income from U.S. obligations and other securities the interest from which is specifically exempted from state income tax by federal statute. Include the portion of dividend income from a mutual fund that is attributable to the mutual fund's investment in similar types of securities. Unless already identified on the federal return, attach a statement specifically identifying the securities. For a mutual fund, identify the fund, qualifying securities held by fund, and percentage of income from qualifying securities.
 - Allowable deductions for the sale or lease of land to a qualifying beginning farmer, or for the sale or lease of a revenue-producing enterprise to a qualifying beginning businessman. To determine eligibility for these deductions, obtain the *Income Tax Guideline: Beginning Farmer Income Tax Deductions* or the *Income Tax Guideline: Beginning Businessman Income Tax Deductions*. **Attach a copy of the Beginning Farmer Statement or Beginning Businessman Statement.**
 - Dividends, up to a maximum of \$15,000, from a corporation that has paid North Dakota income tax under N.D.C.C. ch. 57-38 or North Dakota financial institution tax under N.D.C.C. ch. 57-35.3. If the corporation does not conduct 100% of its business in North Dakota, the dividends must be multiplied by the corporation's percentage of business conducted in North Dakota to determine the deductible amount. The percentage of business conducted in North Dakota is equal to the corporation's apportionment factor reported on the corporation's North Dakota tax return. Contact the corporation to obtain this information.
 - Amount of investment, up to a maximum of \$5,000, in a venture capital corporation under N.D.C.C. ch. 10-30.1. **Attach a copy of the Venture Capital Corporation Investment Reporting Form.**
 - Income earned by a Native American while living and working on the Indian reservation where enrolled.
 - Taxable part of payments from the U.S. Railroad Retirement Board. **Attach a copy of Form RRB-1099 or RRB-1099-R, or both.**
 - Gain from sale of property due to the exercise of eminent domain.
 - Income exempt from income tax under N.D.C.C. ch. 40-57.1 (new and expanding business exemption).
 - Income exempted under N.D.C.C. ch. 40-63 (Renaissance Zone Act). **Attach Schedule RZ.**
 - Amount of income from a pass-through entity subject to the North Dakota financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From A Pass-Through Entity Subject To N.D.C.C. ch. 57-35.3*. **Attach a copy of the statement received from the entity.**
- Nonresident estates or trust**—A fiduciary for a nonresident estate or trust may deduct the same items listed above for a resident estate or trust if the income is included on line 1 and is reportable to North Dakota by the fiduciary.

Line 5**Nonresident estate or trust only**

If a nonresident estate or trust, enter on this line the portion of the fiduciary's federal taxable income that is not taxable in North Dakota. In determining this amount, a proportionate share of the itemized deductions (interest, taxes, fiduciary fees, etc.), estate tax deduction, and exemption amount must be allocated to the non-North Dakota income. Attach a statement showing the calculation of the amount entered on this line.

Line 8

Enter the amount from Federal Form 1041, Schedule G, as follows:

- Line 4.
- **Plus** line 2a (if resident estate or trust).
- **Plus** line 5.
- **Plus** tax from Federal Form 4970 included on line 7.
- **Minus** line 1c.

Specific line instructions for lines 10 through 16

(Page 1, Form 38)

Complete either Schedule 1 or Schedule 2 before completing these lines.

Line 11**Resident only**

If a fiduciary for a resident estate or trust pays income tax to another state, the District of Columbia, or a territory of the United States on income that is also taxed by North Dakota, a limited credit may be allowed. See the instructions to Schedule 4 on page 4.

Line 12

The following lists the income tax credits that are available to an estate or trust. Unless noted otherwise, a credit is allowed to both Schedule 1 and Schedule 2 filers. For information on any of these credits, contact the Office of State Tax Commissioner

- Credit for preserving or renovating historical property in a North Dakota renaissance zone. **Attach Schedule RZ.**
- Credit for investing in a renaissance fund organization. **Attach Schedule RZ.**
- Credit for investing in a qualified North Dakota agricultural commodity processing facility. **Attach a copy of the Ag Commodity Processing Facility Investment Reporting Form.**
- (Schedule 2 filer only) Credit for making a charitable contribution to a nonprofit private high school (having grades 9 through 12) or a nonprofit private college (including the independent college fund) in North Dakota. **Attach a copy of a receipt or canceled check (front and back).**
- (Schedule 2 filer only) Credit for installing a geothermal, solar, or wind energy device on property owned or leased in North Dakota. **Attach a statement describing the device, a detailed list of costs, and date device was installed.**
- (Schedule 2 filer only) Credit for hiring a developmentally disabled or chronically mentally ill person. **Attach a statement showing the name and social security number of the employee, the date of hire, and the amount of wages paid during the tax year.**

- (Schedule 2 filer only) Credit for investing in a North Dakota venture capital corporation. **Attach a copy of the Venture Capital Corporation Investment Reporting Form.**
- (Schedule 2 filer only) Credit for investing in the North Dakota Small Business Investment Company. **Attach a copy of the SBIC Investment Reporting Form.**
- (Schedule 2 filer only) Credit for investing in a North Dakota certified nonprofit development corporation. **Attach a copy of the Nonprofit Development Corporation Investment Reporting Form.**
- (Schedule 2 filer only) Credit for investing in a qualified North Dakota seed capital business. **Attach a copy of the Seed Capital Corporation Investment Reporting Form.**
- (Schedule 1 filer only) If a Federal Form 8801 was completed for the 2001 tax year, and if there is a minimum tax credit (excluding any unallowed credit for nonconventional source fuel or qualified electric vehicle) on it from tax years prior to 2001, the estate or trust may be eligible for an income tax credit. Complete the worksheet on this page to calculate the amount of the credit. Keep the worksheet for future reference.

Specific line instructions for Schedule 3

(Page 2, Form 38)

Schedule 3 must be completed to identify the beneficiaries of the estate or trust and to show their respective shares of North Dakota income (loss) from the estate or trust. If additional lines are needed, attach a separate statement.

Resident individual, estate and trust beneficiaries are subject to North Dakota income tax on their entire share of income, gains and losses as determined for federal income tax purposes.

Nonresident individual, estate, or trust beneficiaries are subject to North Dakota income tax on the portion of their income, gain, or loss from the estate or trust that is derived from North Dakota sources. For this purpose, income from North Dakota sources does not include interest, dividends, and gain from the sale or exchange of intangible property.

For corporation, partnership and limited liability company beneficiaries, special rules apply for determining the amount of income (loss) taxable by North Dakota. Contact the Office of State Tax Commissioner for more information.

If a beneficiary's share of income (loss) reported on Schedule 3 includes interest from U.S. obligations or other securities the interest from which is exempt from state

income tax under federal law (including dividends from a mutual fund attributable to investments by the mutual fund in similar types of securities), a statement on which the specific securities are identified must be attached to Form 38. In the case of dividends from a mutual fund, the statement must show the name of the fund, the identity of the qualifying securities, and the percentage of income derived from the qualifying securities. This statement is not required if the required information is provided on the federal return.

Specific line instructions for Schedule 4

(Page 2, Form 38)

A fiduciary for a resident estate or trust may be eligible for a credit for income tax paid to another state if the fiduciary pays income tax to another state on income that is also taxed by North Dakota. *For this purpose, "state" means any of the other forty-nine U.S. states, the District of Columbia, or a territory of the U.S.*

The credit is available only if an income tax return is filed with the other state on which an income tax is computed and paid. No credit is allowed based on income tax withheld or estimated tax paid.

A copy of the other state's income tax return must be attached to Form 38 to obtain the credit.

Payment of income tax to more than one other state. If income tax is paid to more than one other state on income that is also taxed by North Dakota, a separate Schedule 4 must be completed for each state.

Line 2

Enter the portion of the fiduciary's income (on line 1 of Schedule 4) that was reported to the other state. Disregard any adjustment to the fiduciary's federal income required by the other state's law.

Line 6

Enter the amount of the income tax less any income tax credits (except withholding and estimated tax) shown on the other state's income tax return.

Line 7

If more than one Schedule 4 is required to be completed, add the separately calculated amounts on line 7 of each Schedule 4 and enter the result on Form 38, page 1, line 11.

Worksheet for calculating credit for unused federal credit for prior year minimum tax (for Form 38, Schedule 1 users only)

Important: Keep this worksheet for your records.

1. Enter the amounts from the 2001 Federal Form 8801, lines 18 and 19 (but do not include any unallowed credit for nonconventional source fuel or qualified electric vehicle) **1** _____
2. Enter the portion of line 1 that is attributable to federal alternative minimum tax reported on Form 38, Schedule 1 (Short Method) for tax years prior to 2001 (*See note below*) **2** _____
3. Enter the amount from the 2001 Federal Form 8801, line 25 **3** _____
4. Enter the smaller of line 2 or line 3 **4** _____
5. Multiply line 4 by 14% (.14) **5** _____
 - If a resident, include the amount from line 5 on Form 38, page 1, line 12.
 - If a nonresident, multiply the amount on line 5 by the ratio from Form 38, Schedule 1, line 8b, and include result on Form 38, page 1, line 12.
6. Amount of carryforward to 2002 (*Subtract line 4 from line 2*).. **6** _____

Note: If Form 38, Schedule 2 (Long Method), was used for any tax year prior to 2001, the federal credit attributable to that year may not be included on line 2.